

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 400 OF 2018

Smt. Lata Pravin Suryawanshi & Ors.

.. Petitioners

v/s.

The Chief Officer, Pune Griha
Nirman & Kshetra Vikas Mandal,
MHADA and Anr.

.. Respondents

Mr. A.N. Ranade for the petitioners

Mr. P.G. Lad a/w Ms. Aparna Murlidharan and Ms. Sayli Apte for
respondent no.1 MHADA

Smt. M.S. Shrivastava, AGP for respondent no.2

**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, J.J.**

DATED : 17th JULY, 2019

P.C.

1. The petitioners have challenged a communication dated 13th January, 2012, copy of which is annexed at Annexure-H to the petition. The petitioners are heirs of late Shri. Pravin Baburao Suryawanshi. The deceased had applied for allotment of a flat in MHADA Scheme. In the lottery system for such purpose, the petitioner's name was selected. A flat was also allotted. The deceased predecessors in title of the petitioner also made a payment of a total of Rs.3 lakhs towards such allotment. Subsequently, however, the MHADA by way of the

impugned communication conveyed to the petitioners that late Shri. Pravin Suryawanshi was not entitled for such allotment since he had a residential unit in the same locality, which made him ineligible. The MHADA Authorities relies upon the fact that the petitioner owns a residential unit situated at 521/2966, in the Scheme of MHADA at Sant Tukaram Nagar, Pimpri, Pune. The petitioners relies on an Agreement to Sale of the said property stated to have been executed on 21st March, 2009.

2. Learned Counsel for the MHADA, however pointed out that this was not a registered Agreement to Sale. The sale consideration of Rs.2,50,000/- was not made through banking channels. The same is in favour of the brother-in-law of the late Shri. Pravin Suryawanshi. He further pointed out that in the application for allotment of the flat dated 11th April, 2010, the applicant had shown the same residential unit as his address. On the basis of such documents and circumstances, Counsel submitted that the applicant – late Shri. Pravin Suryawanshi had never sold his residential unit and that the petitioner had made a false claim of not owning any residence in the same locality. When these facts came to the notice of MHADA, the allotment was cancelled.

3. We have heard learned Counsel for the parties at considerable length. We do not find that the stand adopted by the respondent is incorrect. The factors highlighted above are glaring. The Agreement to Sale is unregistered. There is nothing to indicate that the sale consideration having been paid through banking channels. The sale is stated to have been made in favour of the brother-in-law of the owner. Learned Counsel for the petitioner submitted that subsequently the Agreement was registered. If at all this happened in the year 2013 and would, therefore, have no bearing on the past events. In the application for allotment of the flat, late Shir. Pravin Suryawanshi had shown the same place as his address. Despite these conclusions, there is nothing on record suggesting that the MHADA Authorities could retain or forfeit the sale consideration paid by late Shri. Pravin Suryawanshi. Pursuant to allotment of a flat, it was later on cancelled. Learned Counsel for the petitioner stated that such amount has so far not been returned. The respondent shall, therefore, verify the statement. If the amount of Rs.2,99,500/- (Rs.500 was paid for application) is not returned to the petitioner, the same shall be returned within a period of four weeks from today. If so done, there shall be no interest liability. If not, beyond the said period of four weeks, the respondent shall pay simple interest @8% p.a. from such date till actual

payment.

4. The petitions is disposed of accordingly.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)